

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY E. PATLAN,

No. C 06-4397 WHA (PR)

Plaintiff,

ORDER OF SERVICE

v.

D.R. BEARD; Tower JANE DOE;
JOHN DOES 1 & 2

Defendants.

INTRODUCTION

Plaintiff, an inmate of the Pelican Bay State Prison (“PBSP”), has filed a pro se civil rights complaint under 42 U.S.C. § 1983 against PBSP Correctional Officer D.R. Beard and several unnamed PBSP correctional officers. Plaintiff has been granted leave to proceed in forma pauperis.

STATEMENT

Plaintiff alleges that he is a “Northern Hispanic” inmate, with a tattoo of the word “Norteno” on his back. On April 8, 2002, defendant Jane Doe let him out of his cell for a medical appointment, and defendants John Does 1 and 2 escorted him and five “Southern Hispanic” inmates to the medical clinic. Beard left him and the five inmates in a holding cell together without handcuffs, and they assaulted him. Plaintiff alleges that housing and medical officials at the prison, including defendants, had access to information showing that all of the inmates’ memberships in the different ethnic groups, that they knew that northern and southern

1 Hispanic inmates are enemies, and that they knew such inmates should not be escorted to or left
2 in the medical clinic together.

3 DISCUSSION

4 A. STANDARD OF REVIEW

5 Federal courts must engage in a preliminary screening of cases in which prisoners seek
6 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
8 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
9 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
10 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
11 (9th Cir. 1990).

12 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
13 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
14 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
15 upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
16 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
17 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
18 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
19 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
20 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
21 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
22 at 1986-87.

23 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
24 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
25 that the violation was committed by a person acting under the color of state law. *West v. Atkins*,
26 487 U.S. 42, 48 (1988).

B. LEGAL CLAIMS

The Eighth Amendment requires that prison officials take reasonable measures to guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In particular, prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833. The failure of prison officials to protect inmates from attacks by other inmates or from dangerous conditions at the prison violates the Eighth Amendment only when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately indifferent to inmate safety. *Id.* at 834.

Liberally construed, plaintiff's allegations state a cognizable claim that defendants were deliberately indifferent to his safety from other dangerous inmates, in violation of his Eighth Amendment rights.

CONCLUSION

1. The clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, copies of the complaint in this matter and copies of this order upon defendant Correctional Officer D.R. Beard at Pelican Bay State Prison. The clerk shall also serve a copy of this order on the plaintiff and mail a courtesy copy of this order to the Attorney General of the State of California.

2. In order to expedite the resolution of this case, the court orders as follows:

a. No later than sixty days from the date this order is filed, defendant shall file a motion for summary judgment or other dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56, and shall include as exhibits all records and incident reports stemming from the events at issue. If defendants are of the opinion that this case cannot be resolved by summary judgment, they shall so inform the court prior to the date their summary judgment motion is due. All papers filed with the court shall be promptly served on the plaintiff.

b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the court and served upon defendant no later than thirty days from the date of service of the motion.

1 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to
 2 him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and
 3 *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

4 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed to
 5 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff
 6 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION)," which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir.),
 7 *cert. denied*, *Alameida v. Wyatt*, 124 S.Ct 50 (2003).
 8

9 c. Defendants *shall* file a reply brief no later than fifteen days after the date of
 10 service of the opposition.

11 d. The motion shall be deemed submitted as of the date the reply brief is due.
 12 No hearing will be held on the motion unless the court so orders at a later date.


13 3. All communications by the plaintiff with the court must be served on defendants, or
 14 defendants' counsel once counsel has been designated, by mailing a true copy of the document
 15 to defendants or defendants' counsel.

16 4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
 17 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
 18 parties may conduct discovery. Plaintiff may not file requests for discovery with the Court;
 19 rather he must serve them only upon defendant or defendant's counsel after defendant has been
 20 served.

21 5. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
 22 informed of any change of address and must comply with the court's orders in a timely fashion.
 23 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
 24 Federal Rule of Civil Procedure 41(b).

25 **IT IS SO ORDERED.**

26 Dated: September 1, 2009



 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE

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**NOTICE -- WARNING
(SUMMARY JUDGMENT)**

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

**NOTICE -- WARNING
(EXHAUSTION)**

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.